

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-081268
	:	TRIAL NO. B-0806165
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
MICHAEL FRANK,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

In two assignments of error, defendant-appellant Michael Frank contends that the trial court improperly accepted his plea of no contest to one count of breaking and entering,² a felony of the fifth degree. His first claim is that he did not fully understand his rights prior to pleading no contest, and his second claim is that his counsel was ineffective. We affirm.

While a no-contest plea is not an admission of guilt, it is “an admission of the truth of the facts alleged in the indictment.”³ Where an indictment contains sufficient allegations to state a felony offense and a court accepts an intelligent and voluntary plea of no contest, the court must find the defendant guilty of the offense charged.⁴

The core of Frank’s arguments lies in his assertion that during the plea hearing, he “was under a physical disability with diabetes, and gave answers that

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² R.C. 2911.13(A).

³ *State v. Bird*, 81 Ohio St.3d 582, 584, 1998-Ohio-606, 692 N.E.2d 1013.

⁴ *State v. Horton* (May 25, 2001), 1st Dist. No. C-000434, citing *Bird*, supra.

indicate[d] he did not understand the proceeding as he kept claiming he was innocent but still pled.” The record of the plea hearing shows that, at several points during the hearing, Frank claimed that he did not recall committing the offense. But he never claimed to be innocent, and nothing he said indicated that he did not understand the proceedings.

After engaging Frank in a complete Crim.R. 11 colloquy, the trial court asked the state for a reading of the facts. The state indicated that Frank had entered a convenience store, had gone into the back room, had taken a manila envelope, and had left with it. The state postulated that Frank had believed that the envelope contained money. Frank indicated that he had nothing to add to those facts. The trial court found that Frank had “made a knowing, voluntary, and intelligent waiver of his rights.” The trial court accepted his plea and found him guilty.

After this, the trial court heard from an unidentified speaker. She said that she had entered the convenience store with Frank, and that he had asked her to distract the clerk so he could go into the back. She refused and left. Frank emerged from the store a few moments later. As the two walked away, Frank produced the envelope and started going through it. When he found that it contained no money, he “started throwing the receipts, and he was really angry about it.”

Frank told the court that he did not remember doing that. He stated that he had diabetes, and said, “I had been drinking. I probably was high. I just don’t remember doing that.” This is not a claim of innocence. Frank affirmed that fact during the subsequent sentencing hearing, when he said, “I went [to the back room], obviously, a bad call on my part, but I wasn’t even aware that I went back there. I was disoriented. I didn’t know that I went to [the store].” And this statement contradicted a statement made immediately before, when he said, “One of the

reasons why I was even going to do [sic] that [store] was because my sugar was dropping.”

Nothing in the record indicates that Frank’s diabetes inhibited his ability to understand the plea proceedings. He answered all questions appropriately and had no questions for the trial court. The only confusion apparent on the record was provided by his conflicting statements about how much of the incident he could recall and how much had been too clouded by a mixture of his low blood-sugar and his voluntary intoxication. After hearing from Frank at the plea hearing the trial court concluded that his plea was knowing, voluntary, and intelligent. The court did not err in doing so. Therefore, we overrule his first assignment of error.

We also reject Frank’s claim that his counsel was ineffective, as this claim was also premised on the unsupported assertion that Frank had not understood the plea proceedings and had maintained his innocence. We overrule his second assignment of error and affirm the trial court’s judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., SUNDERMANN and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on November 18, 2009

per order of the Court _____.
Presiding Judge